ADMINISTRATIVE APPEAL OF BENJAMIN D. VIEAU
v.
COMMISSIONER, BUREAU OF INDIAN AFFAIRS

IBIA 77-40-A Decided October 5, 1977

Appeal from a decision by the Commissioner, Bureau of Indian Affairs, upholding cancellation of a residential lease.

Affirmed.

APPEARANCES: Benjamin D. Vieau, pro se.

OPINION BY ADMINISTRATIVE JUDGE HORTON

On February 26, 1971, Benjamin D. Vieau, appellant, entered into a residential lease agreement with the Oneida Tribe of Indians of Wisconsin. This lease, No. B-630(71), was duly approved by an agent of the Secretary of the Interior. The basic purpose of the lease was to allow the Indian lessee to construct and maintain a dwelling on the leased premises at the rate of $10 for every 25 years.

As stated in Provision No. 5 of the lease agreement, the Tribe's primary consideration in awarding the above lease was "the improvement of housing for Indian families." Accordingly, Provision No. 16 of the lease provided in pertinent part the following:

> 16. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS--It is herein understood and agreed that the lessees shall within a period of two (2) years from the effective date of this lease, cause permanent type residential improvements to be constructed and completed on the leased premises.

Appellant admits that the only construction accomplished by him since the effective date of the lease has been the completion of a driveway.

Following appellant's failure to respond to a show cause notice regarding proposed cancellation of his lease, issued by the Great Lakes Agency on July 29, 1976, and subsequent to passage of a resolution by the Oneida Business Committee supporting cancellation of

appellant's lease, the Area Director of the Bureau of Indian Affairs, Minneapolis Area Office, officially notified appellant on September 8, 1976, that Lease No. B-630(71) was canceled as of that date pursuant to 25 CFR 131.14. The reason given for cancellation was appellant's failure to comply with Provision No. 16 of the lease by not constructing "permanent-type residential improvements" on the leased property.

In a decision dated January 25, 1977, the Commissioner of Indian Affairs affirmed the cancellation action of the Area Director. Among other things, the Commissioner's decision advised appellant as follows:

> Statements in your letter of September 10, 1976, indicate that you put a lot of work into building a driveway, cutting down trees and other things * * *. A constructed driveway and landscaping could be considered, at most, as improvements that are incidental to residential use. They are not absolutely necessary for residential use. In other words, they do not, in and of themselves, establish residency.
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> The very essence of the lease was to establish a residence on the property. However, we find no evidentiary data in the record including your own statements that any permanent building qualifying as a residential house has ever been constructed or placed on the premises. Also, there is no indication that the property is being used or occupied for residential purposes under the conditions intended and set forth in the lease.

Appellant was granted an appeal from the Commissioner's decision to the Board and additional time within which to file a statement in support of his position. No such formal statement has been filed. From various correspondence contained in the record appellant's position appears to be as follows: 1) the work performed by appellant on the land satisfied the terms of the lease, 2) if more was required than he accomplished, then the tribe and BIA were at fault for not providing him proper guidance, and 3) if the cancellation must stand, appellant desires reimbursement for the cost of improvements made on the leased premises.

In construing the terms of a lease ordinary significance must be given to the words used. In this case, we agree with the BIA and the Oneida Tribe that it would be totally inconsistent with the specific terms and purposes of the residential lease to consider the limited tasks undertaken by appellant on the leased premises as constituting fulfillment of the lessee's legal requirements. Appellant's first ground for appeal is therefore denied.

The Board finds no merit in the contention that the BIA and the tribe failed to provide proper guidance to the appellant prior to cancellation of the lease. The record reveals that although appellant's lease could have been canceled by the BIA in February 1973, it was not canceled until September 1976. Prior thereto, appellant was furnished two written notices of alleged violations of the lease agreement and an opportunity to respond to the charges.

Appellant's final contention is that he should be reimbursed for the amount of improvements made on the land if the cancellation is upheld. No specific dollar amount is claimed. Provision No. 7 of the lease provides that upon termination thereof all improvements "shall be the property of the lessor." See also 25 CFR 131.9. Accordingly, we find that appellant has no legal entitlement to compensation for the cost of improvements made by him.

This decision does not preclude the appellant from 1) requesting reimbursement for cost of improvements from the Oneida Tribe or the successor lessee or 2) seeking a new residential lease from the tribe.

THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 25, 1977 decision of the Commissioner of Indian Affairs canceling lease No. B-630(71) is AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

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Wm. Philip Horton
Administrative Judge

We concur:

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Alexander H. Wilson
Chief Administrative Judge

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Mitchell J. Sabagh
Administrative Judge